

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VICTOR M. LONG, JR.,

Plaintiff,

Case # 19-CV-6422-FPG

v.

DECISION AND ORDER

CORNING INCORPORATED,

Defendant.

INTRODUCTION

On June 7, 2019, *pro se* Plaintiff Victor M. Long, Jr., brought this discrimination case against Defendant Corning Incorporated pursuant to Title VII of the Civil Rights Act of 1964 and moved for *in forma pauperis* status. ECF Nos. 1, 2.

On June 12, the Court denied Plaintiff's *in forma pauperis* motion and ordered him to pay the filing fee. ECF No. 3. On June 18, Plaintiff paid the fee and moved to have the United States Marshals Service perform service in this action. ECF No. 4. On June 20, the Court granted that motion and directed the Clerk of Court to cause the U.S. Marshals to perform service. ECF No. 5. On June 24, the Clerk of Court issued the Summons and forwarded a service packet to the U.S. Marshals.

On July 23, 2019, Plaintiff filed a "Notice of Motion" wherein he asks the Court to grant him a default judgment against Defendant for \$77 million. ECF No. 6. For the reasons that follow, the Court denies Plaintiff's motion.

DISCUSSION

Federal Rule of Civil Procedure 55 sets forth the method for obtaining a default judgment. *See Priestley v. Headminder, Inc.*, 647 F.3d 497, 504-05 (2d Cir. 2011). First, the plaintiff must secure an entry of default from the Clerk of Court, which requires a showing “by affidavit or otherwise” that the defendant “has failed to plead or otherwise defend” itself in the action brought against it. Fed. R. Civ. P. 55(a). Once the plaintiff has obtained an entry of default, he may seek a default judgment. Fed. R. Civ. P. 55(b).

Here, Plaintiff asks for a default judgment, but he did not first obtain an entry of default from the Clerk of Court as Rule 55(a) requires. Moreover, there is no evidence that Defendant is in default because, according to the docket, Defendant has not been served. Because the U.S. Marshals received the materials to perform service only one month ago, it is likely that service is not complete and therefore Defendant’s answer is not due yet.

CONCLUSION

Plaintiff’s Motion for Default Judgment (ECF No. 6) is DENIED.

IT IS SO ORDERED.

Dated: July 24, 2019
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court